

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

GERALD HESTER, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

VISION AIRLINES, INC.,

Defendant.

Case No.: 2:09-cv-00117-RLH-RJJ

ORDER

(Motion for Final Approval - #325)

Before the Court is Plaintiff Gerald Hester and Class' **Motion for Final Approval** (#325, filed March 13, 2013). The Class seeks to disburse funds according to the Class' allocation plan, and award Mr. Hester a service award of \$15,000.00 for acting as Class representative. Additionally, the Class seeks an award of 30% of the gross common fund to be paid to Class Counsel. The Class' Motion for Final Approval is granted.

DISCUSSION

Whether to award Mr. Hester a service award for his efforts is within the Court's discretion. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000). Considering the Mr. Hester's risk, personal difficulties, time and effort expended, and the nature and length of this

1 case, the Court finds a service award of \$15,000.00 to Mr. Hester for acting as Class representative
 2 is fair, adequate, reasonable, and warranted. *See Van Vranken v. Atl. Richfield Co.*, 901 F. Supp
 3 294, 299 (N.D. Cal 1995).

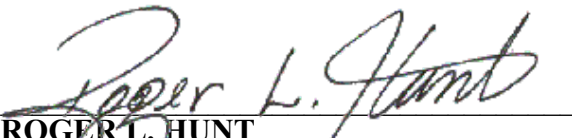
4 The common fund doctrine is a common law rule permitting the recovery of fees
 5 from the damage award obtained. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S.
 6 240 (1975). A reasonable fee under the common fund doctrine is calculated as a percentage of the
 7 recovery. *Blum v. Stenson*, 465 U.S. 886, 900 n. 16 (1984). The Ninth Circuit has recognized 25
 8 percent of the fund as the “benchmark” award that should be given in common fund cases. *Paul,*
 9 *Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989). However, the benchmark
 10 percentage should be adjusted when special circumstances indicate that the percentage recovery
 11 would be either too small or too large in light of the hours devoted to the case or other relevant
 12 factors. *Id.* Here, Class Counsel has expended an extraordinary amount of time, skill, and patience
 13 to obtain the damages reward. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.
 14 1975). Therefore, an upward adjustment to 30 percent is reasonable and warranted.

15 CONCLUSION

16 Accordingly, and for good cause appearing,

17 IT IS HEREBY ORDERED that the Class’ **Motion for Final Approval** (#325) is
 18 GRANTED. Mr. Hester, class representative, is awarded \$15,000.00 from the gross common fund.
 19 Class Counsel is awarded \$1,587,472.35 in attorneys’ fees and \$398,862.92 in costs from the gross
 20 common fund. The remaining net proceeds of the common fund may be distributed according to
 21 the allocation plan previously approved by this Court.

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 23 Dated: July 10, 2013

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 25 
 26 **ROGER L. HUNT**
 United States District Judge